

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JAVIER H. GUERRA,

Plaintiff,

v.

PRICILLA ROSALES, et al.,

Defendants.

No. 2:20-CV-0836-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. Pending before the Court is Plaintiff's second motion for the appointment of counsel, ECF No. 14, filed approximately two weeks after issuance of the Court's order denying Plaintiff's first motion for the appointment of counsel.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is

dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment of counsel because:

. . . Terrell demonstrated sufficient writing ability and legal knowledge to articulate his claim. The facts he alleged and the issues he raised were not of substantial complexity. The compelling evidence against Terrell made it extremely unlikely that he would succeed on the merits.

Id. at 1017.

In denying Plaintiff's prior motion for counsel, the Court stated:

. . .Plaintiff argues appointment of counsel is warranted because it is not trained in the law and he is incarcerated. These are common, not exceptional, circumstances. Further, a review of Plaintiff's filings indicates that he is able to articulate his claims, either on his own or with the assistance of other inmates. Additionally, the legal and factual issues involved in this case, which appears to assert an Eighth Amendment claim based on denial of medical care, are not complex. Finally, at this early stage of the proceedings before the complaint has been found appropriate for service, the Court cannot say Plaintiff has established any particular likelihood of success on the merits.

ECF No. 13.

Plaintiff now states that an inmate who had been assisting him has now "left my Block." ECF No. 14. Plaintiff states that he does not know how to proceed. See id.

In the present case, the Court does not at this time find the required exceptional circumstances. With the exception of issuance of an order directing service of Plaintiff's complaint, nothing has changed since the last time the Court addressed Plaintiff's request for appointment of counsel. Specifically, the complaint has not been served, no defendants have answered, and, as a result, the Court cannot say that Plaintiff has any particular chance of success on the merits. Moreover, to the extent Plaintiff seeks additional time for a specific deadline, the Court will consider such requests as the need arises.

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1 Accordingly, IT IS HEREBY ORDERED that Plaintiff's second request for the
2 appointment of counsel, ECF No. 14, is denied.

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4 Dated: August 26, 2021

A handwritten signature in dark ink, appearing to read 'Dennis M. Cota', written over a horizontal line.

DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE